

**Introduced by Senator Steinberg
(Principal coauthor: Senator Cox)**

February 15, 2007

An act to amend Section 23109 of, and to add Section 23109.3 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 266, as introduced, Steinberg. Motor vehicle speed contest: forfeiture.

Existing law makes a motor vehicle that is used in an unlawful motor vehicle speed contest subject to a one-day to 30-day impoundment.

This bill would allow a county or city to adopt an ordinance providing for declaring those vehicles a nuisance subject to forfeiture and specify provisions that the ordinance must contain.

Because the county district attorney under this procedure would be required to undertake specific duties, if a city elected to participate, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Public safety professionals have confirmed that illegal speed
4 contests and exhibitions of speed pose a real and serious threat to
5 the health and safety of the public, interfere with pedestrian and
6 vehicular traffic, create a public nuisance, and interfere with the
7 right of individuals and businesses to enjoy the use of their
8 properties.

9 (b) Public health and safety are enhanced when illegal speed
10 contests and exhibitions of speed are discouraged and prevented
11 by the enactment of local ordinances that seek to impose forfeiture
12 of vehicles used in these events as a penalty for illegal motor
13 vehicle speed contests and exhibitions of speed.

14 (c) California state law does not expressly authorize cities or
15 counties to enact local ordinances that impose vehicle forfeiture
16 as a penalty for illegal motor vehicle speed contests and exhibitions
17 of speed.

18 (d) By providing cities and counties with the flexibility in state
19 law to impose the penalty of motor vehicle forfeiture for illegal
20 motor vehicle speed contests and exhibitions of speed, this act will
21 enhance public safety and facilitate local control of local speed
22 contest-related problems.

23 SEC. 2. Section 23109 of the Vehicle Code is amended to read:

24 23109. (a) A person shall not engage in a motor vehicle speed
25 contest on a highway. As used in this section, a motor vehicle
26 speed contest includes a motor vehicle race against another vehicle,
27 a clock, or other timing device. For purposes of this section, an
28 event in which the time to cover a prescribed route of more than
29 20 miles is measured, but where the vehicle does not exceed the
30 speed limits, is not a speed contest.

31 (b) A person shall not aid or abet in any motor vehicle speed
32 contest on any highway.

33 (c) A person shall not engage in a motor vehicle exhibition of
34 speed on a highway, and a person shall not aid or abet in a motor
35 vehicle exhibition of speed on any highway.

36 (d) A person shall not, for the purpose of facilitating or aiding
37 or as an incident to any motor vehicle speed contest or exhibition
38 upon a highway, in any manner obstruct or place a barricade or

1 obstruction or assist or participate in placing a barricade or
2 obstruction upon any highway.

3 (e) (1) A person convicted of a violation of subdivision (a) shall
4 be punished by imprisonment in a county jail for not less than 24
5 hours nor more than 90 days or by a fine of not less than three
6 hundred fifty-five dollars (\$355) nor more than one thousand
7 dollars (\$1,000), or by both that fine and imprisonment. That
8 person shall also be required to perform 40 hours of community
9 service. The court may order the privilege to operate a motor
10 vehicle suspended for 90 days to six months, as provided in
11 paragraph (8) of subdivision (a) of Section 13352. The person's
12 privilege to operate a motor vehicle may be restricted for 90 days
13 to six months to necessary travel to and from that person's place
14 of employment and, if driving a motor vehicle is necessary to
15 perform the duties of the person's employment, restricted to driving
16 in that person's scope of employment. This subdivision does not
17 interfere with the court's power to grant probation in a suitable
18 case.

19 (2) If a person is convicted of a violation of subdivision (a) and
20 that violation proximately causes bodily injury to a person other
21 than the driver, the person convicted shall be punished by
22 imprisonment in a county jail for not less than 30 days nor more
23 than six months or by a fine of not less than five hundred dollars
24 (\$500) nor more than one thousand dollars (\$1,000), or by both
25 that fine and imprisonment.

26 (f) (1) If a person is convicted of a violation of subdivision (a)
27 for an offense that occurred within five years of the date of a prior
28 offense that resulted in a conviction of a violation of subdivision
29 (a), that person shall be punished by imprisonment in a county jail
30 for not less than four days nor more than six months, and by a fine
31 of not less than five hundred dollars (\$500) nor more than one
32 thousand dollars (\$1,000).

33 (2) If the perpetration of the most recent offense within the
34 five-year period described in paragraph (1) proximately causes
35 bodily injury to a person other than the driver, a person convicted
36 of that second violation shall be imprisoned in a county jail for
37 not less than 30 days nor more than six months and by a fine of
38 not less than five hundred dollars (\$500) nor more than one
39 thousand dollars (\$1,000).

1 (3) If the perpetration of the most recent offense within the
2 five-year period described in paragraph (1) proximately causes
3 serious bodily injury, as defined in paragraph (4) of subdivision
4 (f) of Section 243 of the Penal Code, to a person other than the
5 driver, a person convicted of that second violation shall be
6 imprisoned in the state prison, or in a county jail for not less than
7 30 days nor more than one year, and by a fine of not less than five
8 hundred dollars (\$500) nor more than one thousand dollars
9 (\$1,000).

10 (4) The court shall order the privilege to operate a motor vehicle
11 of a person convicted under paragraph (1), (2), or (3) suspended
12 for a period of six months, as provided in paragraph (9) of
13 subdivision (a) of Section 13352. In lieu of the suspension, the
14 person's privilege to operate a motor vehicle may be restricted for
15 six months to necessary travel to and from that person's place of
16 employment and, if driving a motor vehicle is necessary to perform
17 the duties of the person's employment, restricted to driving in that
18 person's scope of employment.

19 (5) This subdivision does not interfere with the court's power
20 to grant probation in a suitable case.

21 (g) If the court grants probation to a person subject to
22 punishment under subdivision (f), in addition to subdivision (f)
23 and any other terms and conditions imposed by the court, which
24 may include a fine, the court shall impose as a condition of
25 probation that the person be confined in a county jail for not less
26 than 48 hours nor more than six months. The court shall order the
27 person's privilege to operate a motor vehicle to be suspended for
28 a period of six months, as provided in paragraph (9) of subdivision
29 (a) of Section 13352 or restricted pursuant to subdivision (f).

30 (h) (1) If a person is convicted of a violation of subdivision (a)
31 and the vehicle used in the violation is registered to that person,
32 the vehicle may be impounded at the registered owner's expense
33 for not less than one day nor more than 30 days.

34 (2) *If a local authority adopts an ordinance pursuant to Section*
35 *23109.3 and, if a person is convicted of a violation of subdivision*
36 *(a) and the vehicle used in that violation is registered to that*
37 *person, the vehicle is subject to forfeiture as a nuisance pursuant*
38 *to the ordinance adopted pursuant to Section 23109.3.*

39 (i) A person who violates subdivision (b), (c), or (d) shall upon
40 conviction of that violation be punished by imprisonment in a

1 county jail for not more than 90 days, by a fine of not more than
2 five hundred dollars (\$500), or by both that fine and imprisonment.

3 (j) If a person's privilege to operate a motor vehicle is restricted
4 by a court pursuant to this section, the court shall clearly mark the
5 restriction and the dates of the restriction on that person's driver's
6 license and promptly notify the Department of Motor Vehicles of
7 the terms of the restriction in a manner prescribed by the
8 department. The Department of Motor Vehicles shall place that
9 restriction in the person's records in the Department of Motor
10 Vehicles and enter the restriction on a license subsequently issued
11 by the Department of Motor Vehicles to that person during the
12 period of the restriction.

13 (k) The court may order that a person convicted under this
14 section, who is to be punished by imprisonment in a county jail,
15 be imprisoned on days other than days of regular employment of
16 the person, as determined by the court.

17 (l) This section shall be known and may be cited as the Louis
18 Friend Memorial Act.

19 SEC. 3. Section 23109.3 is added to the Vehicle Code, to read:

20 23109.3. (a) A local authority may adopt an ordinance that
21 subjects a vehicle to forfeiture as a nuisance when a person is
22 convicted of a violation of subdivision (a) of Section 23109.3, and
23 the vehicle the person used in that violation is registered to him
24 or her.

25 (b) An ordinance providing for vehicle forfeiture pursuant to
26 this section shall include a provision establishing that the vehicle
27 may be impounded at the registered owner's expense for more
28 than 30 days. The ordinance shall also provide all of the following:

29 (1) The ordinance applies only if the driver of the vehicle is a
30 registered owner of the vehicle at the time of the impoundment.

31 (2) If there is a community property interest in the vehicle at
32 the time of the impoundment by a person other than the driver,
33 and the vehicle is the only vehicle available to the driver's
34 immediate family that may be operated with a class C driver's
35 license, the vehicle shall be released to that registered owner or to
36 the community property interest owner upon compliance with all
37 of the following requirements:

38 (A) The registered owner or the community property interest
39 owner requests release of the vehicle and the owner of the
40 community property interest submits proof of the interest.

1 (B) The registered owner or the community property interest
2 owner submits proof that he or she, or an authorized driver, is
3 properly licensed and that the impounded vehicle is properly
4 registered pursuant to this code.

5 (C) All towing and storage charges related to the impoundment
6 and any administrative charges authorized pursuant to Section
7 22850.5 are paid.

8 (D) The registered owner or the community property interest
9 owner signs a stipulated vehicle release agreement, as described
10 in subparagraph (E), in consideration for the nonforfeiture of the
11 vehicle. This requirement applies only if the driver requests release
12 of the vehicle.

13 (E) A stipulated vehicle release agreement shall provide for the
14 consent of the signator to the automatic future forfeiture and
15 transfer of title to the state of any vehicle registered to that person,
16 if the vehicle is driven by any person in a motor vehicle speed
17 contest.

18 (F) The stipulated vehicle release agreement described in
19 subparagraph (E) shall be reported by the impounding agency to
20 the Department of Motor Vehicles not later than 10 days after the
21 day the agreement is signed.

22 (3) (A) The impounding agency, in the case of a vehicle that
23 has not been released pursuant to paragraph (2), or that has not
24 been otherwise released, shall promptly ascertain from the
25 Department of Motor Vehicles the names and addresses of all legal
26 and registered owners of the vehicle.

27 (B) The impounding agency, within 10 days of the
28 impoundment, shall send a notice by certified mail, return receipt
29 requested, to all legal and registered owners of the vehicle, at the
30 addresses obtained from the Department of Motor Vehicles,
31 informing them that the vehicle is subject to forfeiture and will be
32 sold or otherwise disposed of pursuant to this section. The notice
33 shall also include instructions for filing a claim with the district
34 attorney, and the time limits for filing a claim. The notice shall
35 also inform any legal owner of its right to conduct the sale pursuant
36 to paragraph (4). If a registered owner is personally served at the
37 time of impoundment with a notice containing all the information
38 required to be provided by this subparagraph, a further notice is
39 not required to be sent to the registered owner. However, a notice
40 shall be sent to the legal owners of the vehicle, if any. If notice is

1 not sent to the legal owners within 10 working days, the
2 impounding agency shall not charge a legal owner for more than
3 15-days of impoundment when a legal owner redeems the
4 impounded vehicle.

5 (C) Processing charges shall not be imposed on a legal owner
6 who redeems an impounded vehicle within 15 days of the
7 impoundment of that vehicle. If claims are not filed and served
8 within 15 days after the mailing of the notice in subparagraph (B),
9 or if claims are not filed and served within five days of personal
10 service of the notice specified in subparagraph (B), when another
11 mailed notice is not required pursuant to subparagraph (B), the
12 impounding agency shall prepare a written declaration of forfeiture
13 of the vehicle to the impounding agency. A written declaration of
14 forfeiture signed by the district attorney under this clause shall
15 provide good and sufficient title to the forfeited vehicle. A copy
16 of the declaration shall be provided on request to a person informed
17 of the pending forfeiture pursuant to subparagraph (B). A claim
18 that is filed and is later withdrawn by the claimant shall be deemed
19 not to have been filed.

20 (D) If a claim is timely filed and served, then the district attorney
21 shall file a petition of forfeiture with the appropriate juvenile or
22 superior court within 10 days of the receipt of the claim. The
23 district attorney shall establish an expedited hearing date in
24 accordance with instructions from the court, and the court shall
25 hear the matter without delay. The court filing fee of one hundred
26 dollars (\$100) shall be paid by the claimant, but shall be reimbursed
27 by the impounding agency if the claimant prevails. To the extent
28 practicable, the civil and criminal cases shall be heard at the same
29 time in an expedited, consolidated proceeding. A proceeding in
30 the civil case is a limited civil case.

31 (E) The burden of proof in the civil case shall be on the
32 prosecuting agency, by a preponderance of the evidence. All
33 questions that may arise shall be decided and all other proceedings
34 shall be conducted as in an ordinary civil action. A judgment of
35 forfeiture does not require as a condition precedent the conviction
36 of a defendant of an offense which made the vehicle subject to
37 forfeiture. The filing of a claim within the time limits specified in
38 subparagraph (C) is considered a jurisdictional prerequisite for the
39 availing of the action authorized by that subparagraph.

1 (F) All right, title, and interest in the vehicle shall vest in the
2 state upon commission of the act giving rise to the forfeiture.

3 (4) A vehicle that is impounded and is not released pursuant to
4 paragraph (2) and is subsequently forfeited pursuant to this section
5 shall be sold once an order of forfeiture is issued by the district
6 attorney of the county of the impounding agency or a court, as the
7 case may be, pursuant to paragraph (3).

8 (5) A legal owner who is a motor vehicle dealer, bank, credit
9 union, acceptance corporation, or other licensed financial institution
10 legally operating in this state, or the agent of that legal owner, may
11 take possession and conduct the sale of the forfeited vehicle if the
12 legal owner or agent notifies the agency impounding the vehicle
13 of its intent to conduct the sale within 15 days of the mailing of
14 the notice pursuant to subparagraph (B) of paragraph (3). Sale of
15 the vehicle after forfeiture pursuant to this subparagraph may be
16 conducted at the time, in the manner, and on the notice usually
17 given for the sale of repossessed or surrendered vehicles. A notice
18 pursuant to this subparagraph may be presented in person, by
19 certified mail, by facsimile transmission, or by electronic mail.

20 (6) If the legal owner or agent of the owner does not notify the
21 agency impounding the vehicle of its intent to conduct the sale as
22 provided in paragraph (5), the agency shall offer the forfeited
23 vehicle for sale at public auction within 60 days of receiving title
24 to the vehicle.

25 SEC. 4. If the Commission on State Mandates determines that
26 this act contains costs mandated by the state, reimbursement to
27 local agencies and school districts for those costs shall be made
28 pursuant to Part 7 (commencing with Section 17500) of Division
29 4 of Title 2 of the Government Code.